

testator's nephew, Thomas L. Simmons; and until the executor shall make the sale of the real estate, the will declared, that "all, both real and personal, shall remain under his direction, the proceeds applicable to the payment of my debts, the support of my wife and family, and to the college charges of my nephew, Thomas L. Simmons," &c.

It is quite clear, I think, that the testator did not intend to give his wife the same interest in the services of the residue of his negroes, as he had given her in the negro named Major, but that he designed that these negroes, other than Major, should, for the space of three years, be employed for the benefit of his estate, for the payment of debts, for the support of the wife and family, and the education of his nephew.

It appears from the accounts, that the proportion of the proceeds of the real estate distributed to the widow, Mrs. Harrison, together with a portion of the devise to her not included in the seventy acres surrendered to Dr. Johns, is fully equivalent to, and in fact considerably exceeds, her dower interest in the entire real estate of her husband, and this being so, I am of opinion, that the eleventh exception cannot be maintained, and is in conflict with the former opinion and order of this court.

The solicitors of the parties have signed an agreement, which, among other things, provides, that the account C. distributing the proceeds of the real estate sold by the trustee, Robert Plummer, may be confirmed, reserving, however, to Mrs. Harrison the right of appeal from the order of confirmation. The order, therefore, will be according to this agreement, and *pro forma*.

It appears by a paper filed on the 5th instant, that Thomas L. Simmons, the residuary devisee and legatee, has received, and now has in his possession, certain negroes and sums of money; and it is agreed that the accounts may be corrected by charging the said devisee and legatee, accordingly, with corresponding credits to the executor, John Wood. This admission will be noticed by the Auditor in stating the accounts, now about to be ordered, but, in the meantime, there seems to be much difficulty in saying what shall be the final disposition of the property. It is thought, however, that there can be no impro-